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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 592

RAYMOND P. GALLAGHER, CHIEF OF POLICE OF THE CITY OF SPRINGFIELD, MASSACHUSETTS, FOSTER FURCOLO, GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS AND EDWARD J. McCORMACK, JR., ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS,

APPELLANTS,

v.

CROWN KOSHER SUPER MARKET OF MASS., INC.,
IRVING HEAFITZ,
MORRIS CHAITOVSKY,
RUTH B. COHEN, and
RABBI MOSES D. SHEINKOPF,

APPELLEES.

APPELLEES' MOTION TO AFFIRM THE JUDGMENT OR DISMISS THE APPEAL

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In the
Supreme Court of the United States

OCTOBER TERM, 1959

No. 532.

RAYMOND P. GALLAGHER, CHIEF OF POLICE OF THE CITY OF SPRINGFIELD, MASSACHUSETTS, FOSTER FURCOLO, GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS AND EDWARD J. McCORMACK, JR., ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS,

APPELLANTS,

v.

CROWN KOSHER SUPER MARKET OF MASS., INC.,
IRVING HEAFITZ,
MORRIS CHAITOVSKY,
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RABBI MOSES D. SHEINKOPF,

APPELLEES.

APPELLEES' MOTION TO AFFIRM THE JUDGMENT OR DISMISS THE APPEAL

I. Motion to Affirm or Dismiss

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, Appellees move that the judgment and decree of the Court below be affirmed on the

ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. In the alternative, Appellees move that the appeal be dismissed because not taken in conformity with the Rules of this Court.

II. Statement

Appellants' statement of the case omits certain facts which Appellees believe may have a bearing on the disposition of their motion. Among these facts are the following:

a. Unless restrained in these proceedings Chief of Police Gallagher intends to enforce the provisions of Mass. G. L. c. 136 to the full extent of his authority (see Appendix A setting out the pertinent part of the stipulation of facts agreed to by the parties).

b. The Jurisdictional Statement quotes § 5 of Mass. G. L. c. 136 and in Appendix E sets out § 6 of said chapter. Additional provisions which may be pertinent are appended hereto as Appendix B, as they appear in Mass. G. L. (Ter. Ed. 1932) as amended, §§ 2, 3, 4, 4A, 7, 10, 11, 12, 14, 21, 22, 27.

c. The three named individual Plaintiffs are Orthodox Jewish customers of Crown Kosher Super Market suing on behalf of themselves and many others similarly situated as indicated by the list attached to the Complaint. Rabbi Moses D. Sheinkopf is an Orthodox rabbi suing on behalf of himself and all other rabbis similarly situated. (J.S. pp. 11, 66).

d. Certain other essential facts as found by the Court are set out in Appellees' argument hereinafter.

Appellants' statement of facts is erroneous in alleging at

the top of Page 5, "an equity proceeding in the State courts was also brought by the said Chernock to test the constitutionality of the statute in question but this suit was dismissed by the petitioner." No such equity proceedings were brought. There was an equity suit in the State court to restrain further criminal proceedings by Gallagher until such time as the then pending criminal case *Commonwealth* v. *Chernock*, 336 Mass. 384 (1957) could be decided. This is set out in the stipulation agreed to by the parties (See Appendix A).[1]

III. Argument

The present appeal, according to the Jurisdictional Statement, presents seven questions. The Appellees respectfully submit that in view of the findings of fact made by the District Court and the principles of law established by this Court, none of the questions presented is substantial within the meaning of the Rules of this Court and that Questions 6 and 7 have not been raised in conformity with the Rules of this Court.

A short discussion of each of the questions raised by Appellants indicates that Appellees' motion should be granted:

1. "Does a Three-Judge Court have jurisdiction to enjoin a municipal police official from enforcing a statute on the grounds that such statute is unconstitutional?"

28 USC § 2281 requires the convening of a Three

[1] See reference in Dissenting Opinion Footnote J.S. p. 33. The dissenting judge also annexed to his opinion an exemplified copy of this bill in equity. (J.S. p. 59) The document (not introduced in evidence) fully supports the stipulation.

Judge District Court where a state official is to be restrained in the enforcement of any state statute. While Police Chief Gallagher may be considered for some purposes a local officer, nevertheless, in enforcing Mass. G. L. c. 136, he was acting "in the interest of the State and not simply in the interest of the locality where he serves". *Spielman Motor Sales Company* v. *Dodge*, 295 U.S. 89, 94 (1935). "An official though localized by his geographic activities and the mode of his selection, is performing a State function when he enforces a statute which embodies a policy of state-wide concern." *Browder* v. *Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956), and cases cited in Footnote 9 on page 713, aff'd 352 U.S. 903 (1956). Also see majority opinion on Petition for Rehearing, J.S. p. 67. Moreover, the intervention of the Attorney General in the instant case confirms the fact that Gallagher was performing a state function.

2. "Are the plaintiffs proper parties to raise the issues before the Court?"

At this time the Appellees feel that it is unnecessary to add to the discussion in the majority opinion on pp. 17, 14-15 of the Jurisdictional Statement showing that the Plaintiffs are proper parties.

3. "Should the Court have exercised its equitable jurisdiction?"

The present case is not one where comity requires a federal court to stay its decision pending state court determination of the meaning and application of a state statute. The Supreme Judicial Court of Massachusetts has already interpreted the statute and has found it applicable to Chernock, the manager of the corporate Plaintiff. That court overruled contentions that the Defendant's activities came within the statutory exception and that the act violated the Massa-

chusetts Constitution. Thus c. 136 was "exposed to state construction or limiting interpretation before the federal courts (were) asked to decide upon (its) constitutionality, so that federal judgment (is) based on something that is a complete product of the State, the enactment as phrased by its legislature and as construed by its highest court." *Harrison* v. *NAACP*, 360 U.S. 167, 178 (1959).

The only question undecided by the Supreme Judicial Court is one of Federal Constitutional law (not raised by the Defendant in *Commonwealth* v. *Chernock*) and this issue can no longer be avoided. As stated by the Court in *Browder* v. *Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956) at page 713, Aff'd 352 U.S. 903 (1956), the doctrine whereby a federal court declines to exercise its jurisdiction "has no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal courts have a responsibility as heavy as that which rests on State courts". Surely, this is particularly true where Federal questions alone are involved.

4. "Do the provisions of the Massachusetts General Laws Chapter 136 violate the rights, privileges or immunities of the plaintiffs under the Constitution of the United States in interfering with their freedom of religion, by depriving them of their liberty or property without due process of law or by denying them the equal protection of the laws?"[2]

In the instant case there are findings of fact in

[2] Appellants' question does not ask whether c. 136 is unconstitutional as a law respecting the establishment of religion, one of the grounds on which Appellees rested their case (see J.S. p. 5 and the Majority Opinion pp. 16-17 and the discussion beginning on p. 23 of the J.S.)

accordance with Rule 52 (a) F.R.C.P. (J.S. p. 28). On the findings of fact made by the Three Judge Court, a proper application of the law as established by this Supreme Court could admit of no conclusion other than that the enforcement of c. 136 against the Plaintiffs is unconstitutional. Among these basic findings of fact rendering such a conclusion imperative are the following:

a. The officers, stockholders, and directors of the corporate Plaintiff are Orthodox Jews who observe the Jewish Sabbath from sundown Friday to sundown Saturday and do not operate their store during such period. (J.S. p. 12). While the corporate Plaintiff's super market offers for sale all categories of food, only kosher meats and meat products are carried and 95% of the rest of its stock is kosher. (J.S. p. 11.) Note that the Jurisdictional Statement, p. 4, is misleading in suggesting that the market sells "all types of meats and groceries."

b. The large majority of Crown Market's customers, because of religious beliefs, may not shop on their Sabbath. (J.S. p. 12) The individual Plaintiffs, as was stipulated by the parties, may not shop on Saturday.

c. If the Crown Market were compelled to close on Sunday, it would operate under a great handicap as against other markets open six days a week if it could afford to remain in business at all. (J.S. p. 25)

d. Crown Market's Orthodox customers (including Plaintiffs in this suit) would be, under a very substantial disadvantage, if they remain faithful to their religious convictions, as compared with shoppers whose Sabbath is observed on Sunday.

If the corporate Plaintiff is closed on Sunday, the Rabbi Plaintiffs would be hindered in their function of servicing food and suffer great detriment in their efforts to preserve due observance of the Jewish Sabbath and Jewish dietary laws. (J.S. p. 25)

e. Chapter 136, therefore, denies the Plaintiffs the liberty to work, shop or pursue other "secular conduct" on Sunday (J.S. p. 24) and puts an economic penalty upon the Plaintiffs and others observing as their Sabbath some other day than Sunday (J.S. pp. 24-25).

It furnishes special protection to the dominant Christian sects which celebrate Sunday as the Lord's Day without furnishing such protection to those Christian sects and Orthodox and Conservative Jews who observe Saturday as the Sabbath. (J.S. p. 24)

f. The description of c. 136 as merely a "day of rest" statute cannot be accepted. (J.S. p. 20)

1. Massachusetts already has a wholly separate law requiring employers to allow their employees at least twenty-four consecutive hours of rest in every seven consecutive days. (Mass. G. L. c. 149, §48)
2. The exceptions in c. 136 which permit various activities on Sunday are at variance with such a description of the Lord's Day statute and in themselves indicate that the primary purpose of the act was to establish a religious Sabbath. (See Appendix E to Jurisdictional Statement and Appendix B to this motion.)
3. The exceptions set out in c. 136 are con-

tained in some 70-odd enactments (J.S. pp. 18, 19) and form an almost unbelievable hodge-podge (J.S. p. 18) and, for the most part, are not conditional on the cessation of labor on some other day of the week (J.S. p. 21)

4. The exceptions discriminate arbitrarily, without rational basis against the Plaintiffs so as to deprive them of equal protection of the laws (J.S. p. 26)

Upon the foregoing facts, the Three Judge Court, in following principles established by this Court, could come to no conclusion other than that c. 136 is a law respecting the establishment of religion and an interference with the free exercise of religion and a violation of the first amendment as incorporated by the fourteenth amendment. *Everson* v. *Board of Education*, 330 U.S. 1, 14-16, (1947); *McCollum* v. *Board of Education*, 333 U.S. 203, 213 (1948)

Even if the decree appealed from were not buttressed by numerous findings of fact indicating that c. 136 was primarily for the purpose of setting up a religious Sabbath, the act would still be unconstitutional as applied to the Appellees in this case. If we assume, contrary to the findings, that c. 136 merely establishes a "day of rest", the application of the act against these Appellees, who already rest on their own Sabbath, would place them under severe pressure to abandon the tenets of their faith and to conform to the practice of another religion. This pressure would be applied by the state through the criminal law. To validate such an invasion of rights guaranteed by the first amendment, there must be a grave and immediate danger to the interests of the state, *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 639 (1943); *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945).

To compel people who already observe another day of rest, to "rest" on Sunday also hardly seems to fulfill an urgent public need. Especially does the justification seem weak when the criminal statute to accomplish this result is shot through with numerous exceptions, even as to hours on Sunday, to permit businesses and persons to operate on seven days a week. In those cases in which an infringement of first amendment liberties has been held justified, there was a very serious danger to public health or morals, such as a small pox epidemic or the practice of polygamy. Here, the provisions of the act itself discredit the claim of any public necessity for its application against the Plaintiffs.

Upon the foregoing findings of fact also, the Three Judge Court could come to no conclusion other than that the discriminations in c. 136 were arbitrary, without rational foundation and, under principles established by this Court, constituted a violation of the due process clause of the fourteenth amendment and a denial to the Plaintiffs of the equal protection of the laws. *Morey* v. *Doud*, 354 U.S. 457, 466 (1957), *Binney* v. *Long*, 299 U.S. 280, 294, (1936), *Pierce* v. *Society of Sisters*, 268 U.S. 510, 535, (1925), *Opinion of the Justices*, 300 Mass. 615, 617 (1938); *Opinion of the Justices*, 337 Mass. 796 (1958).

5. Has the Three Judge Court correctly applied the Massachusetts statute as interpreted by the Supreme Judicial Court of the Commonwealth?

In no respect did the Three Judge Court depart from the decisions of the Massachusetts Court construing the meaning of c. 136, § 5 and § 6 thereof. It even accepted the State Court's construction of § 6 that the words "secular business and labor" do not include keeping open a shop (J.S. p. 19). Probably this

question raised by the Appellants refers to the finding by the Three Judge Court that c. 136 sets up Sunday as a religious Sabbath and not merely as a "day of rest". This finding involved no interpretation of the meaning of the statute. The Court correctly applied the Statute as it was interpreted by the Massachusetts court. The Three Judge Court, however, was not bound by any characterization of the statute by the State Court. If it were so bound, the federal courts could be deprived of jurisdiction to examine the actual effect of a State law whenever a state court merely asserted that it had a different purpose, *Society for Savings* v. *Bowers*, 349 U.S. 143, 151 (1955), *Coppage* v. *Kansas*, 236 U.S. 1, 15-16 (1915).

Moreover, the Three Judge Court actually did follow the characterization of the Lord's Day Statute as establishing a religious Sabbath expressed in a long line of Massachusetts decisions. These cases were decided before and after *Commonwealth* v. *Has*, 122 Mass. 40 (1877) which was the first case to hold that the act set up merely a day of rest. (See discussion in Majority Opinion, J.S. pp. 21-23 and cases cited on p. 21, also *Commonwealth* v. *Dextra*, 143 Mass. 28, 31, (1886), *Commonwealth* v. *McCarthy*, 244 Mass. 484, 486, (1923)).

6. Is the evidence submitted to the Court sufficient as a matter of law to sustain the findings and decree?

The Jurisdictional Statement does not specify what findings the Appellants claim to be plainly wrong or in what respect any evidence is insufficient to support them. Without some such specification, this Court, in determining whether briefs and further arguments are necessary, would have to read the entire transcript and make its own selection of the findings of fact as

to which the Appellants believe the evidence to be insufficient. Question No. 6, therefore, on its face, presents no particular matter so substantial as to require further argument. In this respect also Appellants' appeal does not conform with the Rules of this Court because it is not a short and concise statement of the question presented by the appeal expressed in the terms and circumstances of the case as required by Rule 15 of the Revised Rules.

7. "Is the decree entered by the Court consistent with the findings of fact?"

Rule 15 requires that the Jurisdictional Statement contain, if the appeal is from a federal court, "a copy of such order, judgment or decree, which may, however, be limited to the portions thereof appealed from". In view of the failure of the Appellants to present this Court with a copy of the judgment, it is not clear exactly what the Appellants' mean by the word, "consistent." (For instance, the Jurisdictional Statement on page 5 suggests that the opinion concluded that § 5 alone of c. 136 was unconstitutional. However, the declaratory judgment part of the decree referred to c. 136 without specifying § 5 and the opinion also dealt with the entire act.)

It may be, that on the findings of fact, the Court could have entered a permanent injunction broader in scope than was actually entered. However, this would not provide the Appellants with ground for reversal since they were not prejudiced by such action. 28 U.S.C. 2111, *Commercial Credit Corporation* v. *United States*, 175 F.2d 905, 908 (8th Cir. 1949), *Hughes* v. *Lawyers Trust Co.*, 108 F.2d 792 (2nd Cir. 1940) cert. denied, 310 U.S. 647 (1940).

For the foregoing reasons, the Appellees ask that their motion to affirm the judgment be allowed.

The Appellees further ask that their motion to dismiss the appeal be allowed as not within the jurisdiction of this Court, because not taken in conformity to the Rules of this Court in the following respects:

a. Question No. 6 of the Jurisdictional Statement presents no concise statement of facts material to the consideration of the question as required by Rule 15.

b. No copy of the Decree appealed from is appended to the Jurisdictional Statement as required by Rule 15.

Respectfully submitted,

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Appendix A

PART OF STIPULATION AS TO FACTS AGREED TO BY THE PARTIES
(Filed November 13, 1948)

The parties to the above-entitled suit hereby stipulate as follows:

I. Unless restrained in these proceedings, the defendant will enforce the provisions of Mass. G. L. (Ter. Ed.) c. 136 to the full extent of his authority.

II. There is no case now pending in the state courts of Massachusetts against the corporate Plaintiff or its Manager, Harold Chernock, involving the enforcement of Mass. G. L. (Ter. Ed.) c. 136 or by either of them to stay proceedings under said Act.

The corporate Plaintiff's Manager, Harold Chernock, was convicted by the District Court of Springfield for keeping open a shop on Sunday in violation of G. L. c. 136 at the address of the corporate Plaintiff, the said Chernock appealed to the Superior Court for Hampden County and was convicted after trial. Thereafter, the said Chernock took his exceptions to the Supreme Judicial Court of Massachusetts. These exceptions were subsequently overruled in an opinion, *Com.* v. *Chernock*, Mass. A.S. 1057 on November 13, 1957.

After the proceedings in the District Court of Springfield, the corporate Plaintiff filed a bill in equity in the Superior Court of Hampden County to restrain Raymond P. Gallagher, Chief of Police of the City of Springfield, from serving further complaints upon the petitioner until such time as the case of *Com.* v. *Chernock* had been decided. The court issued such a preliminary injunction. Following the decision in *Com.* v. *Chernock*, a final decree was entered dismissing the bill in equity.

* * *

Appendix B

Certain Sections of Massachusetts General Laws, Chapter 136[3] not quoted in Appellants' Jurisdictional Statement or Appended to it.

(Tercentenary Edition, 1932 as amended)

Section 2. Being Present at or Taking Part in Certain Entertainments on Lord's Day Penalized; Exceptions.

Whoever on the Lord's day is present at a game, sport, play or public diversion, except a concert of sacred music, a public entertainment duly licensed as provided in section four or a free open air concert given by a town, or by license of the mayor or the selectmen, upon a common or public park, street or square, or except a game of golf conducted on an open air golf course, or except a game of tennis or dancing at a wedding or celebration of a religious custom or ritual if no charge is made for being present or for dancing, or except after one o'clock post-meridian a game of outdoor lawn bowling or the playing of golf or driving on an outdoor golf driving range or playing on a miniature golf course, so called, shall be punished by a fine of not more than five dollars. Whoever on the Lord's day takes part in any game, sport, play or public diversion, except as aforesaid, shall be punished by a fine of not more than fifty dollars. This and the following section shall not apply to amusement enterprises lawfully conducted under section four A or four B or to sports or games conducted in accordance with sections twenty-one to twenty-five, inclusive, in any city or town which accepts said sections or in accordance with sections twenty-six to thirty two, inclusive, in any city or town in which said sections

[3] The Act is entitled, "Observance of the Lord's Day".

twenty-six to thirty-two are then in force. (1760-1, 20, S9; 1782, 23, S81, 7; 1791, 58, S81, 5; 1796, 89, S1; RS50, S5; 1858, 151; GS84, S4; PS98, S1; 1887, 391, S1; 1895, 434, S81, 4; RL 98, S81, 2, 5; 1904, 460, SS 1-3; 1908, 385, S1; 1918, 257, SS336, 338; 1919, 5; 1920, 2; 1929, 249; 1928, 406, S1; 1931, 275; 1931, 426, S243; 1933, 150, S1; 1934, 63; 1935, 78; 1946, 207, S1; 1955, 255, S1; 1956, 11, appvd. Jan. 23, 1956; effective 90 days thereafter; 1956, 212, appvd. March 19, 1956; effective 90 days thereafter; 1956, 256, appvd. April 10, 1956; effective 90 days thereafter.)

Section 3. Maintaining Certain Public Exhibitions Prohibited.

Whoever offers to view, sets up, establishes, maintains, or attempts to set up, establish or maintain, or promotes or assists in such attempt, or promotes, or aids, abets or participates in offering to view, setting up, establishing or maintaining any public entertainment on the Lord's day, except as provided in section two, unless such public entertainment shall be in keeping with the character of the day and not inconsistent with its due observance and duly licensed as provided in section four, or whoever on the Lord's day acts as proprietor, manager or person in charge of a game, sport, play or public diversion, except a public entertainment licensed under section four and except as provided in section two, shall be punished by a fine of not more than five hundred dollars. (CL 133, SS 1, 2; 1692-3, 22, S 1; 1716-7, 13, S 1; 1727-8, 5, S1; 1760-1, 20, S82, 9; 1782, 23, S81, 7; 1791, 58, S81, 5; 1796, 89, S1; RS 50, S81, 5; GS 84, S81, 4, 9; 1862, 152; 1863, 143; PS 98, S81, 2; 1887, 391; 1895, 434, S81, 2, 4; RL 98, S81, 2, 5; 1904, 460, S81-3; 1908, 385, S1; 1918, 257, SS336, 338; 1919, 5; 1920, 2; 1955, 255, S2.)

Section 4. Certain Public Entertainments May Be Licensed; Revocation.

Except as provided in section one hundred and five of chapter one hundred and forty-nine, the mayor of a city or the selectmen of a town may, upon written application describing the proposed entertainment, grant, upon such terms or conditions as they may prescribe, a license to hold on the Lord's day a public entertainment, including musical entertainment provided by mechanical or electrical means, in keeping with the character of the day and not inconsistent with its due observance, whether or not admission is to be obtained upon payment of money or other valuable consideration, and, if the proposed entertainment described in the application is solely for the exhibition of motion pictures, for the benefit of patrons in a public dining room or for the use of television, the use of radio, or musical entertainment provided by mechanical or electrical means, the mayor or selectmen may grant an annual license therefor; provided, that no such license shall be granted to have effect before one o'clock in the afternoon, nor shall it have effect unless the proposed entertainment shall have been approved in writing by the commissioner of public safety as being in keeping with the character of the day and not inconsistent with its due observance. The application for the approval of the proposed entertainment by the commissioner shall be accompanied by a fee of two dollars, or, in the case of an application for the approval of an annual license, as herein provided, by a fee of fifty dollars. Any such license may, after notice and a hearing given by the mayor or selectmen issuing the same, or by said commissioner, be suspended, revoked or annulled by the officer or board giving the hearing. The foregoing provisions, insofar as they authorize any person to refuse to grant, or

to suspend, revoke or annul a license upon the ground that the proposed entertainment is not in keeping with the character of the Lord's day or not consistent with its due observance, and insofar as they require written approval of the proposed entertainment by said commissioner, shall not apply to any person making an application for a license to exhibit motion pictures or for the use of radio or television on said day, nor to any license issued upon such application. (1908, 385, S1; 1909, 189; 1926, 326; 1945, 575; 1953, 596; 1954, 303; 1955, 742, appvd. and effective on Sept. 9, 1955; 1956, 157, appvd. March 6, 1956; effective 90 days thereafter. Amended by 1957, 300, apprv'd April 22, 1957; effective 90 days thereafter.)

Section 4A. Exceptions of Amusement Parks and Beaches. The mayor of a city or the selectmen of a town, upon written application therefor, and upon such terms and conditions as they may prescribe, may grant licenses for the maintenance and operation upon the Lord's day at amusement parks or beach resorts, so called, in such city or town, of any enterprise hereinafter described, for admission to which or for the use of which a payment of money or other valuable consideration may or may not be charged, namely:— Bowling alleys, shooting galleries restricted to the firing therein of rifles, revolvers or pistols using cartridges not larger than twenty-two calibre, photographic galleries or studios in which pictures are made and sold, games, and such amusement devices as may lawfully be operated therein on secular days; provided, that no such license shall be granted to have effect before one o'clock in the afternoon, nor shall it have effect unless the proposed enterprise shall, upon application accompanied by a fee of two dollars, have been approved in writing by the commissioner

of public safety as provided in the case of public entertainments under section four. Any licensee hereunder may distribute premiums or prizes in connection with any game or device lawfully maintained and operated by him under authority hereof. Any such license may, after notice and a hearing given by the mayor or selectmen issuing the same, or by said commissioner, be suspended, revoked or annulled by the officer or board giving the hearing. So much of this section as relates to the maintenance and operation of bowling alleys shall not apply in any city or town which shall have accepted the provisions of section four B. (1933, 150; 1933, 309, S1; 1946, 209, S2.)

Section 7. Sale of Certain Articles on Lord's Day Licensed.

In Boston, and in any other city or town which accepts this and section eight or has accepted corresponding provisions of earlier laws, in a city by its city council or in a town by the voters of the town at an annual town meeting, the licensing board or officer in such city or town, or if there is no such board or officer the aldermen of a city, or if there are no aldermen the city council, with the approval of the mayor, or the selectmen of a town, may grant, to any reputable person who on secular days is a retail dealer in frozen desserts and/or frozen dessert mix, confectionery, soda water or fruit and who does not hold a license for the sale of alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, a license to keep open his place of business on the Lord's day for the sale of frozen desserts and/or frozen dessert mix, confectionery, soda water or fruit. (Amended by 1957, 356, S18, appvd. May 13, 1957; effective 90 days thereafter.)

Section 10. Certain Parades with Music Allowed on Lord's Day.

Any post or camp of an incorporated organization of veterans of any war in which the United States has engaged, or any incorporated civic or fraternal organization, may parade with music on the Lord's day for the purpose of attending divine service, holding commemorative exercises or dedicating memorials; provided, that the music shall be suspended while passing within two hundred feet of any place of public worship where services are being held. (1908, 354; 537; 1920, 141; 1922, 119; 1930, 90; 1931, 176.)

Section 11. Policemen or Firemen May Parade with Music on Certain Sundays.

Any company or association of policemen or firemen, whether in active service or former members of a police or fire department, may parade with music, in the case of policemen, on policemen's memorial day, the first Sunday of June in each year, and, in the case of firemen, on firemen's memorial day, the second Sunday of June in each year, for the special purpose of decorating the graves of deceased policemen or firemen, as the case may be; provided, that the music shall be suspended while passing within two hundred feet of any place of public worship where services are being held. (1906, 139; 1931, 41, S1.)

Section 12. Persons Keeping Places of Entertainment, etc., to Entertain Only Travelers, etc.

Whoever, keeping a house, shop, cellar or place of public entertainment or refreshment, entertains therein on the Lord's day any persons other than travelers, strangers or lodgers, or suffers such persons on said day to remain therein or in the yards, orchards or fields appertaining thereto, drinking or spending their

time idly or at play, or in doing any secular business, shall for a first offence be punished by a fine of not more than fifty dollars for each person so entertained or suffered so to remain; and for a subsequent offence by a fine of not more than one hundred dollars; and if convicted three times, he shall thereafter be disqualified to hold a license. (1692-3, 22, S3; 1698, 10, S4; 1727-8, 5, S3; 1760-1, 20, S4; 1782, 23, SS4, 7; 1791, 58, S3; 1796, 89, S1; 1832, 166, S5; RS 47, S13; 50 S3; 1837, 242, S1; 1844, 160; GS 84, S3; 1864, 79; PS 98, S4; RL 98, S6.)

Section 14. Penalty for Rude Behavior.

Whoever on the Lord's day behaves rudely or indecently in any house of public worship shall be punished by a fine of not more than ten dollars. (1782, 23, S9; 1791, 58, S7; RS 50, S8; GS 84, S7; PS 98, S7; RL 98, S9.)

Section 21. Certain Sports and Games Permitted.

In any city which accepts sections twenty-one to twenty-five, inclusive, by vote of its city council, or in any town which accepts said sections by vote of its inhabitants, it shall be lawful on the Lord's day to take part in or witness any athletic outdoor sport or game, as hereinafter provided between the hours of one thirty and six thirty post meridian and, in the case of a base-ball game commenced before the hour of six thirty post meridian, for such further time beyond said hour as may be necessary to complete said game; provided that said game had been scheduled to commence at or before the hour of three post meridian, or is the second of two successive games to be played on the same day, the first of which had been scheduled to commence at or before the hour of two post meridian. In any such city or town it shall be lawful on the Lord's day to

take part in or witness, as hereinafter provided, any indoor hockey or basketball game between the hours of one thirty post meridian and twelve midnight. (1920, 240, S81; 7; GL 136, S26; 1928, 406, S2; 1931, 174; 1935, 104; 169; 1948, 119; 1951, 32; 1954, 132.)

Section 22. To Be Held Only on Licensed Places.

Such sports or games shall take place on such playgrounds, parks or other places as may be designated for that purpose in a license or permit issued by the city council, with the approval of the mayor, or by the selectmen; provided, that if, under any statute or ordinance, a public playground or park is placed under the exclusive charge and authority of any other officials, such officials shall, for that playground or park, be the licensing authority; and provided, that no sport or game shall be permitted in a place, other than a public playground or park, within one thousand feet of any regular place of worship. (1920, 240, S2; 1928, 406, S2.)

Section 27. Licensing Such Sports, etc., on Designated Playgrounds, etc.

Such sports or games shall take place on such playgrounds, parks or other places as may be designated for that purpose in a license or permit issued by the city council, with the approval of the mayor, or by the selectmen; provided, that if under any statute or ordinance, a public playground or park is placed under the exclusive charge and authority of any other officials, such officials shall, for that playground or park, be the licensing authority; and provided, that no sport or game shall be permitted in a place, other than a public playground or park, within one thousand feet of any regular place of worship. (1928, 406, S2; 1931, 426, S244.)